

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	EB Docket No. 03-152
)	
WILLIAM L. ZAWILA)	Facility ID No. 72672
)	
Permittee of FM Station KNKS,)	
Coalinga, California)	
)	
AVENAL EDUCATIONAL SERVICES, INC.)	Facility ID No. 3365
)	
Permittee of FM Station KAAX,)	
Avenal, California)	
)	
CENTRAL VALLEY EDUCATIONAL SERVICES, INC.)	Facility ID No. 9993
)	
Permittee of FM Station KYAF,)	
Firebaugh, California)	
)	
H. L. CHARLES D/B/A FORD CITY BROADCASTING)	Facility ID No. 22030
)	
Permittee of FM Station KZPE,)	
Ford City, California)	
)	
LINDA WARE D/B/A LINDSAY BROADCASTING)	Facility ID No. 37725
)	
Licensee of FM Station KZPO,)	
Lindsay, California)	

To: Marlene H. Dortch, Secretary
Attn: Chief Administrative Law Judge Richard L. Sippel

**ENFORCEMENT BUREAU'S OPPOSITION TO CENTRAL VALLEY AND AVENAL'S
BRIEF IN RESPONSE TO ORDER, FCC 16M-12**

1. On January 14, 2016, Central Valley Educational Services, Inc. (Central Valley) and Avenal Educational Services, Inc. (Avenal) filed a request to appeal the Presiding Judge's *Memorandum Opinion and Order*, FCC 16M-01, adding issues to the above-captioned matter (Request).¹ The Presiding Judge requested that the Enforcement Bureau (Bureau) respond to this Request.² The Presiding Judge then requested additional briefing.³ On March 15, 2016, Central Valley and Avenal submitted a supplemental brief (Supplemental Brief).⁴ Following further argument at the March 29, 2016, Status Conference, the Presiding Judge requested that the Bureau respond point-by-point to Central Valley and Avenal's Supplemental Brief.⁵ In accordance with the Presiding Judge's request, the Bureau so responds herein.

2. *The "Unincorporated Non-profit Association" Argument.* Pursuant to Section 397(6) of the Communications Act of 1934, as amended (Act), and Section 73.503(a) of the Commission's rules, only a (i) public agency, (ii) nonprofit private foundation, corporation, or association; or (iii) municipality which transmits only noncommercial programs for educational purposes can qualify to own and operate NCE stations.⁶ Thus, it is axiomatic that an NCE applicant must be an established nonprofit educational organization *when it files its application*.⁷

¹ See Request for Permission to File Appeal (47 C.F.R. Sec. 1.301(b)), filed Jan. 14, 2016. This Request was filed by Mr. Couzens.

² See Email from Presiding Judge to the Parties, EB Docket No. 03-152, dated Feb. 19, 2016.

³ See Order, FCC 16M-12, (ALJ, rel. Mar. 23, 2016).

⁴ See Brief in Response to Order: FCC 16M-12, filed Mar. 25, 2016.

⁵ See also Order, FCC 16M-13 (ALJ, rel. Mar. 30, 2016).

⁶ See 47 U.S.C. § 397(6); see also 47 C.F.R. § 73.503(a) ("A noncommercial educational FM broadcast station will be licensed only to a nonprofit educational organization and upon showing that the station will be used for the advancement of an educational program.").

⁷ See, e.g., *Hammock Environmental and Educational Community Services*, 25 FCC Rcd. 12804, 12807 and n. 17 (M.B. Sept. 10, 2010)(citing FCC Form 340, Section II, Question 2, and corresponding instructions); see also

An NCE applicant cannot be just a group of individuals with no articulated educational purpose. It is clear that Central Valley and Avenal are not public agencies or municipalities. In addition, they have never suggested they were nonprofit foundations. Thus, the only issue here is whether, at the time they filed their applications for NCE stations, Central Valley and Avenal were nonprofit corporations or unincorporated nonprofit associations with an articulated educational purpose. Central Valley and Avenal did not – and cannot – establish that they were either type of entity.

3. In their applications for NCE stations KYAF (FM) and KAAX (FM), Central Valley and Avenal specifically represented to the Commission that, at the time of these applications, they were nonprofit corporations. They included “Inc.” as part of the “Name of Applicant” and checked the “nonprofit corporation” box.⁸ However, the record plainly establishes that Central Valley and Avenal were not incorporated at the time they filed these applications.⁹ Thus, it is indisputable that neither Central Valley nor Avenal met the requirements for NCE eligibility as nonprofit educational corporations at the time they filed their respective applications.

4. Central Valley and Avenal now assert, for the first time, that despite checking the box for “nonprofit corporation” on their respective applications, they were actually unincorporated nonprofit associations.¹⁰ Central Valley and Avenal appear to suggest that simply because unincorporated associations are recognized under California law as separate legal

Applications for Review of Decisions Regarding Six Applications for New Low Power FM Stations, 28 FCC Rcd. 13390, 13394 and 13396 (2013).

⁸ See, e.g., Exhibit 1, filed herewith, at FCC Form 340 pp. 1 and 2.

⁹ See Enforcement Bureau’s Supplemental Motion To Add Issues With Proposed Order, filed June 18, 2015, at 4-6, ¶¶ 5-7; see also *Memorandum Opinion and Order*, FCC 16M-01 (ALJ, rel. Jan. 12, 2016), at 3-4, ¶¶ 6-7.

¹⁰ See, e.g., Supplemental Brief at 2-3.

entities, they were qualified applicants for NCE stations.¹¹ However, the Commission requires more than just an after-the-fact self-serving statement to conclude that an applicant was an unincorporated nonprofit association with an educational purpose qualified to own and operate an NCE station. In *Hammock Environmental*, for example, the Commission's Media Bureau was convinced that the NCE applicant, who claimed to be a unincorporated association, met the NCE qualification requirements only after the applicant submitted its Articles of Association & Bylaws evidencing its educational purpose and a copy of a letter to the Florida Secretary of State's Office requesting that the association be registered with the state – each of which predated the applicant's application for an NCE station.¹² Neither Central Valley nor Avenal have produced any such documentation. Thus, Central Valley and Avenal have also failed to demonstrate their NCE eligibility as unincorporated nonprofit associations with an educational purpose at the time they filed their respective applications.

5. *The Non-Reserved Band Argument.* Central Valley and Avenal also argue that Commission case law explicitly excuses NCE applicants who file in the non-reserved band from demonstrating their NCE eligibility at the time of filing their applications.¹³ Their only support for this assertion is a footnote which states nothing more than that low power FM (LPFM) stations must maintain NCE eligibility at all times while non-reserved band FM stations, which can change their status from noncommercial to commercial, need not.¹⁴ Nothing in the case Central Valley and Avenal cite specifically excludes NCE applicants in the non-reserved band from the qualification requirements of Section 397(6) of the Act or Section 73.503(a) of the

¹¹ See, e.g., *id.*

¹² See *Hammock Environmental*, 25 FCC Rcd. at 12805-07 and n. 19.

¹³ See Supplemental Brief at 3-4.

¹⁴ See *id.* at 4.

Commission's rules. In fact, in that very same case, the Commission actually confirms that "applicants for NCE stations ... whose eligibility is restricted by statute, must demonstrate their legal existence under pertinent state law *at the time that their applications are filed*."¹⁵ Thus, as the Bureau has previously argued, there is nothing in either the Commission's rules or precedent that exempts entities who apply for NCE stations in the non-reserved band from the NCE qualification requirements.¹⁶

6. *The LPFM Cases Argument.* Despite relying on a case which primarily addresses LPFM stations, Central Valley and Avenal again challenge the Presiding Judge's application of LPFM precedent in *Memorandum Opinion and Order*, FCC 16M-01, citing alleged differences in the basic authorization policies for LPFM and non-LPFM NCE stations.¹⁷ However, as the Bureau noted previously, the LPFM licensing rules – like the non-LPFM NCE rules – similarly require that an applicant be a "nonprofit educational organization."¹⁸ The LPFM cases at issue offer nothing more than additional guidance on how the Commission has interpreted the "nonprofit educational organization" requirement for NCE stations such as those at issue. There can be no dispute that the Presiding Judge maintains the discretion to consider such persuasive authority in his determinative process.

7. *The Section 1.229 Argument.* Lastly, Central Valley and Avenal assert that the Bureau's request to add the NCE qualification issue was untimely.¹⁹ The Commission's rules allow any party to seek to modify the issues at any time when the motion "raises a question of

¹⁵ *Applications for Review of Decisions Regarding Six Applications*, 28 FCC Rcd. at 13394 (internally citing to Section 397(6)(A) of the Act) (emphasis added).

¹⁶ See, e.g., Enforcement Bureau's Opposition To Central Valley And Avenal's Request To Appeal *Order*, FCC 16M-01, filed Feb. 24, 2016, at 3-5, ¶¶ 3-6 (EB's Opposition).

¹⁷ See Supplemental Brief at 4-5.

¹⁸ See, e.g., EB's Opposition at 4-5, ¶ 6; compare 47 C.F.R. § 73.503(a) and 47 C.F.R. § 73.853(a)(1).

¹⁹ See Supplemental Brief at 5.

probable decisional significance and such substantial public interest importance as to warrant consideration in spite of its untimely filing”²⁰ or when other “good cause is shown for the delay in filing.”²¹ The Presiding Judge has the discretion to determine when such circumstances exist.²² Moreover, Central Valley and Avenal have already recognized that the question of their qualifications to own and operate NCE stations is case-determinative.

Conclusion

8. For the reasons stated above, and for those articulated in the Bureau’s February 24, 2016 Opposition, the Bureau respectfully requests that the Presiding Judge deny Central Valley and Avenal’s Request to appeal *Memorandum Opinion and Order*, FCC 16M-01. Moreover, as these issues should remain in this case, and the facts are not in dispute, the permits for NCE stations KYAF (FM) and KAAX (FM), held by Central Valley and Avenal, respectively, should be vacated and the parties dismissed.

²⁰ 47 C.F.R. § 1.229(c).

²¹ 47 C.F.R. § 1.229(b)(3).

²² See, e.g., 47 C.F.R. § 1.243(k).

Respectfully submitted,

Travis LeBlanc
Chief, Enforcement Bureau



Pamela S. Kane
Special Counsel
Investigations and Hearings Division
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445 12th Street, SW, Room 4-C330
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Federal Communications Commission
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Washington, D.C. 20554
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April 14, 2016

EXHIBIT 1

William L. Zawila
ATTORNEY AT LAW

OCT 17 1 20 AM '88

DIVISION

12550 BROOKHURST STREET
GARDEN GROVE, CALIFORNIA 92640
(714) 636-5040

October 13, 1988

RECEIVED BY

OCT 17 1988

MAIL BRANCH

Secretary
Federal Communications Commission
1919 "M" Street, N.W.
Washington, D.C. 20554

Re: Enclosed Application for a New FM Station at Firebaugh, CA

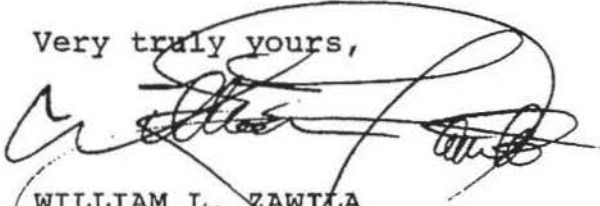
Secretary:

Enclosed for filing with the Commission is an original and two copies of an application for a new educational FM station at Firebaugh, California.

Please contact this office if you need further information in this matter.

Very truly yours,

WLZ/ff
encls (3)


WILLIAM L. ZAWILA
Attorney For Central Valley
Educational Services, Inc.

RECEIVED

OCT 17 1988

FBI EXAMINERS

103.1MHz

BPED -381017ND NEW CA
FIREBAUGH
CENTRAL VALLEY EDUC SERVICES, INC.

**APPLICATION FOR CONSTRUCTION PERMIT FOR
NONCOMMERCIAL EDUCATIONAL BROADCAST STATION**
(Carefully read instructions before filling out Form—RETURN ONLY FORM TO FCC)

For Commission Use Only

File No.

831017AD

Section 1

ORIGINAL

General Information

Code: 31

FN: 10/26

1 Name of Applicant

Central Valley Educational
Services, Inc.

Street Address

12550 Brookhurst Street,
Suite A

City

Garden Grove

State

CA

ZIP Code

92640

Telephone No.

(Include Area Code)

None.

Send notices and communications to the following named person at the address below:

Name

Street Address

WILLIAM L. ZAWILA
Attorney at Law12550 Brookhurst Street,
Suite A

City

Garden Grove

State

CA

ZIP Code

92640

Telephone No.

(Include Area Code)

(714) 636-5040

2 This application is for: ☐ AM☒ FM☐ TV

(a) Channel No. or Frequency: 276-A 103.1

(b) Community of license:

City

State

Fieriebairgh

CA

(c) Check one of the following boxes:

☒ Application for new station☐ Major Change in Existing station; call sign:☐ Minor Change in Existing station; call sign:☐ Modification of Construction Permit; File No. of CP:☐ Amendment to Pending Application; Reference Number (ARN):

NOTE: It is not necessary to use this form to amend a previously filed application. Should you do so, however, please submit only Section 1 and those other portions of the form that contain the amended information.

3 Is this application mutually exclusive with a renewal application?

☐ YES☒ NO

If Yes, State

Call letters:

Community of license:

City

State

-

Name of Applicant

Central Valley Educational Services, Inc.

1 (a) Applicant is: (Check one box below)

- ☐ a general partnership operating on a nonprofit basis
 ☒ a nonprofit corporation
☐ a limited partnership operating on a nonprofit basis
 ☐ Other (specify)
☐ a governmental or public educational agency or institution

If the applicant is an unincorporated association or a legal entity other than a partnership, nonprofit corporation, or a governmental or public educational agency or institution, describe in Exhibit No. ____ the nature of the applicant.

- (b) Is there any provision contained in any by-laws, articles of incorporation, partnership agreement, charter, statute or any other document which would restrict the applicant in advancing an educational program or complying with any Commission rule, policy or provision of the Communications Act of 1934, as amended. ☐ YES ☒ NO

If Yes, provide particulars as Exhibit No. ____.

- (c) Does the applicant certify that copies of all pertinent documents set out in (b) are in the public inspection file? ☒ YES ☐ NO

Describe in Exhibit No. A how the proposed station will be used for the advancement of an educational program. This does not apply if applicant is applying for change in facilities.

Citizenship And Other Statutory Requirements

- 2 (a) Is the applicant in compliance with the provisions of Section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and Foreign governments? ☒ YES ☐ NO

- (b) Will any funds, credits, etc., for the construction, purchase or operation of the station be provided by aliens, foreign entities, domestic entities controlled by aliens, or their agents? ☐ YES ☒ NO

If yes, provide particulars as Exhibit No. ____.

- 3 (a) Has an adverse finding been made, adverse final action taken or consent decree approved by any court or administrative body as to the applicant or any party to the application in any civil or criminal proceeding brought under the provisions of any law related to the following subjects:
Any felony, antitrust, unfair competition, fraud, unfair labor practices or discrimination? ☐ YES ☒ NO

- (b) Is there now pending in any court or administrative body any proceeding involving any of the matters referred to in (a)? ☐ YES ☒ NO

If the answer to (a) or (b) above is Yes, attach as Exhibit No. ____ , a full disclosure concerning the persons and matters involved, identifying the court or administrative body and the proceeding (by dates and file numbers), stating the facts upon which the proceeding was based or the nature of the offense committed, and disposition or current status of the matter.

Applicants are reminded that questions 4 through 5 of this Section must be completed as to all "parties to this application" as that term is defined in the instructions to Section II of this form.

Table I Parties To Application

4 Complete Table I with respect to all parties to this application.

(Note: If the applicant considers that to furnish complete information would pose an unreasonable burden, it may request that the Commission waive the strict terms of this requirement with appropriate justification)

INSTRUCTIONS: If applicant is partnership, fill out columns (a), (b), and (d), stating as to each general or limited partner (including silent partners): (a) name and residence, (b) nature of partnership interest (i.e., general or limited), and (d) percent of ownership interest. If applicant is a corporation or an unincorporated association with 50 or fewer stockholders, stock subscribers, holders of membership certificate or other ownership interest, fill out all columns, giving the information requested as to all officers, directors and members of governing board. In addition, give the information as to all persons or entities who are the beneficial or record owners of or have the right to vote capital stock, membership or ownership interests or are subscribers to such interests. If the applicant has more than 50 stockholders, stock subscribers or holders of membership certificates or other ownership interests, furnish the information as to officers, directors, members of governing board, and all persons or entities who are the beneficial or record owners of or have the right to vote 1% or more of the capital stock, membership or ownership interest. If applicant is governmental or public educational agency or institution, fill out columns (a) and (c) as to all members of the governing board and chief executive.

Name and Residence Address(es) (a)	Nature of Partnership Interest or Office Held (b)	Director or Member of Governing Board		% of: Ownership (O) or Partnership (P) or Voting Stock (VS) or Membership (M) (d)
		YES	NO	
		(c)		
Linda Ross 2326 Paradise Road Anaheim, CA 92806	President/Secretary	Yes		100% Ownership and Voting Stock

1. Does the applicant propose to employ five or more full time employees?

☐ Yes ☒ No

If Yes, the applicant must include an EEO program called for in the separate Model EEO Program (FCC 396-A).

Section VII

CERTIFICATIONS

1. Has or will the applicant comply with the public notice requirement of Section 73.3580 of the Commission's Rules?

☒ Yes ☐ No

2. Has the applicant reasonable assurance, in good faith, that the site or structure proposed in Section V of this form, as the location of its transmitting antenna, will be available to the applicant for the applicant's intended purpose?

☒ Yes ☐ No
Exhibit No.

If No, attach as an Exhibit, a full explanation.

3. If reasonable assurance is not based on applicant's ownership of the proposed site or structure, applicant certifies that it has obtained such reasonable assurance by contacting the owner or person possessing control of the site or structure.

George Sullivan
Name of Person Contacted

(714) 669-1963
Telephone No. (include area code)

Person contacted: (check one box below)

☐ Owner ☒ Owner's Agent ☐ Other (specify)

Linda Ross
Applicant's Signature

October 14, 1988
Date

Linda Ross, President
Central Valley Educational
Services, Inc.

The APPLICANT hereby waives any claim to the use of any particular frequency as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations, and that all exhibits are a material part hereof and incorporated herein.

1 Does the applicant propose to employ five or more fulltime employees?

☐ YES ☒ NO

If the answer is Yes, the applicant must include an EEO program called for in the separate 5 Point Model EEO Program (FCC Form 396 (A)).

Section VII

Certification

1 Has or will the applicant comply with the public notice requirement of Section 73.3580 of the Commission's Rules?

☒ YES ☐ NO

The APPLICANT hereby waives any claim to the use of any particular frequency as against the regulatory power of the United States use of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations, and that all exhibits are a material part hereof and are incorporated herein.

The APPLICANT represents that this application is not filed for the purpose of impeding, obstructing, or delaying determination on any other application with which it may be in conflict.

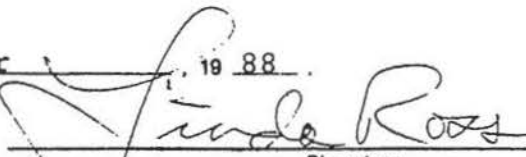
In accordance with Section 1.65 of the Commission's Rules, the APPLICANT has a continuing obligation to advise the Commission, through amendments, of any substantial and significant changes in information furnished.

**WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT.
U.S. CODE, TITLE 18, Section 1001.**

I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith

Signed and dated this 14th day of October, 19 88.
Central Valley Educational
Services, Inc.

Name of Applicant


Linda Ross
President/Secretary

Signature

Title

**FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT
AND THE PAPERWORK REDUCTION ACT**

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to determine if the benefit requested is consistent with the public interest. The staff, consisting variously of attorneys, accountants, engineers, and application examiners, will use the information to determine whether the application should be granted, denied, dismissed, or designated for hearing. If all the information requested is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to obtain the requested Permit.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552a(e)(3), AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

CERTIFICATE OF SERVICE


Alicia McCannon, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 14th day of April, 2016, sent copies of the foregoing "ENFORCEMENT BUREAU'S OPPOSITION TO CENTRAL VALLEY AND AVENAL'S BRIEF IN RESPONSE TO *ORDER*, FCC 16M-12" to:

The Honorable Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554 (by hand, courtesy copy)

Rachel Funk
Office of the Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554 (by hand, courtesy copy)

William Zawila, Esq.
12600 Brookhurst Street, Suite 105
Garden Grove, CA 92804-4833
(714) 636-5040 (telephone)
(by first-class mail and email to william.zawila@yahoo.com)

Michael Couzens
Michael Couzens Law Office
6536 Telegraph Avenue
Suite B201
Oakland, CA 94609
(by first-class mail and email to cuz@well.com)


Alicia McCannon